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IN THE

Supreme Court of the United States

No. 206

October Term, 1962

THE BOWATER STEAMSHIP COMPANY, LTD.,
Petitioner,

against

EARL PATTERSON, Individually and as Secretary of INTERNATIONAL WOODWORKERS OF AMERICA, AFL-CIO; JOHN DOE, RICHARD ROE & JOHN ROE, being fictitious, the real names of the defendants being unknown to the plaintiff, said fictitious names being intended to designate the pickets of the plaintiff's Motor Vessel GLADYS BOWATER,
Respondents.

BRIEF FOR INTERNATIONAL WOODWORKERS OF AMERICA, AFL-CIO, IN OPPOSITION

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Question Presented

Did the Courts below correctly decide that Federal District Court had no jurisdiction to issue an injunction against the INTERNATIONAL WOODWORKERS OF AMERICA, AFL-CIO from peacefully picketing the "M. V. Gladys Bowater" protesting "Bowater's" unfair treatment of the Woodworkers members in Newfoundland and the threat which such unfair treatment presented to the woodworkers members in the United States?

Statement of Facts

The statement of facts contained in the opinion of the Court of Appeals is accurate and succinct. We add here for purposes of opposition to the grant of a writ of certiorari, certain amplifications from the undisputed facts in the record.

Petitioner, Bowater Steamship Company Ltd., an English Corporation, owns and operates a fleet of seven vessels among which is the "Motor Vessel Gladys Bowater". Bowater Steamship Company Ltd. is a wholly owned subsidiary of the Bowater Paper Company Ltd. (an English Corporation) which is the second largest paper company in the world (P. A. 37-38; T. 22-23 *et seq.*).[1] The Bowater Paper Co., Ltd. owns and controls the Bowater Corporation of North America, which owns and controls the Bowater Newfoundland Pulp and Paper Mills, Ltd., the Bowater Paper Company of New York, a New York Corporation, and the Bowater Southern Corporation which operates a paper mill in Tennessee (P. A. 32 *et seq.*).

Bowater Newfoundland Pulp and Paper Mills, Ltd. operates paper mills and timberlands in Newfoundland and all but a small amount is sold in the United States. The cross examination of Mr. Fitzpatrick revealed:

> "Q. * * * is it safe to say that the relationship of Bowater Newfoundland Pulp and Paper Mills to the Newfoundland Export and Shipping Co., Ltd., its export subsidiary and Bowater Paper Company, the New York Corporation does a steady and repetitive volume of business in the United States?.
>
> A. Yes, I think that would be correct.

[1] References designated "P. A." are to the appendix to plaintiff-appellant's brief for the Court below. Occasional references to the testimony are preceded by the letter "T".

Q. Something in the dimensions you gave me, four hundred and fifty thousand tons times about $145.00 a ton?

A. About that, yes." (P. A. 36-37; T. 19-20).

By way of further amplification to the recitation of facts contained in the opinion of the Court of Appeals it is an uncontradicted fact that the International Woodworkers of America, AFL-CIO (hereinafter referred to as the "I. W. A.") has members in the United States and Canada including Newfoundland, and indeed has contracts throughout the United States and in a number of the Canadian provinces. The I. W. A. represents woods employees in the States of Washington and Oregon who have a base rate of between two dollars ($2.00) and two dollars and ten cents ($2.10) per hour upon which are added piece work rates. In Minnesota the rates are between one dollar and sixty-five cents ($1.65) and one dollar and seventy cents ($1.70) per hour. In addition, the I. W. A. represents a substantial number of employees under contract and is actively seeking to represent employees in the southern portions of the United States (P. A. 21; 77-79).

In Newfoundland, the I. W. A.'s successful organizing drive was thwarted by a ruling that they did not have "status" since their principal office was in Portland, Oregon (P. A. 66; T. 71). The I. W. A. then set up two local unions, one for "Bowaters" and another for Anglo Newfoundland Development Corporation. The I. W. A. then signed up all of the employees at A. N. D. and Bowaters for a second time. At "Bowaters" they were then met with the argument that its woods employees were employees of independent contractors, although Bowaters owned or held the timber licenses, owned all of the equipment and established the wage rate for woods employees

in its contract with the labor contractors (P. A. 49-50 and P. A. 62; T. 80-81).

Negotiations being to no avail with A. N. D., the matter was referred to the Newfoundland Conciliation Board which held extensive hearings and made recommendations which were accepted in full by the I. W. A. and rejected *in toto* by the company (P. A. 68-69).

The recommendations included a two year agreement with three cents (3¢) an hour the first year and two cents (2¢) the second, bringing the hourly wage to $1.10. The Board also recommended that in the second year of the agreement, that the sixty-four hour week be reduced to fifty-four hours (P. A. 69).

The award being rejected, a secret ballot election as required by law was held and 98.8 per cent voted to strike; a strike of the men was held; Bowaters announced in the newspapers that it would and in fact it did, supply A. N. D. with pulp wood.

The chronology of events are recited in the decision of the Court of Appeals then ensued which brought on the picketing and the litigation.

ARGUMENT

The decisions of the Courts below are clearly correct.

POINT ONE

There is nothing tortious about the union's conduct.

It is hornbook law that to obtain an injunction the applicant must show tortious conduct upon the part of the de-

fendant. "Bowaters" in the case at bar initially made much of the legend on the picket sign which read "S. S. Gladys Bowater Unfair to Organized Labor—International Woodworkers of America AFL-CIO" on the ground that it was misleading. The argument was spurious for their own affidavits revealed that the International Longshoremen's Association, AFL-CIO, whose members respected the picket line, didn't care what the sign said (P. A. 8). Furthermore "Bowaters" would not be assuaged by an offer to change the legend on the sign. Petitioners would have this Court accept its implied premise that peaceful picketing is *per se* tortious.

This Court in *Marine Cooks and Stewards AFL-CIO, et al. v. Panama Steamship Co., Ltd.* observed:

> "The Court of Appeals adopted this position but cited no authority for its statement that the picketing was 'unlawful' nor have respondents in this Court pointed to any statute or persuasive authority proving that petitioner's conduct was unlawful". 362 U. S. 365 at 371.

Petitioner chooses to ignore the provisions of Section 20 of the Clayton Act which expressly applies to foreign corporations, 29 U. S. C. 53 and the decision of this Court in *United States v. Hutchinson*, 312 U. S. 219, 235-236 with reference to Section 20:

> "In this light Section 20 removes all such allowable conduct (*i.e.*, peaceful picketing) from the taint of being 'violations of the laws of the United States' including the Sherman Law".

POINT TWO

The tort, if any, is a maritime tort and there is no jurisdiction in Federal Courts in an equitable action to enjoin the commission of maritime torts.

Romero v. International Operating Co., 358 U. S. 354 (1959) tells us that the Federal Statute affording jurisdiction of suits arising under the Constitution or laws of the United States did not include claims arising under the general maritime law. Stated differently, if the District Court lacks jurisdiction over the action of the alien employee alleging a maritime tort, *mutatis mutandis*, the District Court lacks jurisdiction over a similar action brought by an alien employer. *Khedivial Line, S.A.E. v. Seafarers International Union*, 278 F. 2d 49 (C. A. 2-1960).

POINT THREE

The case at bar clearly involves or grows out of a labor dispute.

We here merely emphasize the fact that the dispute involved "Bowater" and the "I. W. A." The dispute involves the I. W. A. members in Newfoundland in an acute stage, to be sure; but the unfair tactics of Bowaters to the I. W. A. with regard to wages, hours, and working conditions affects the I. W. A. members working in the United States chronically. It should be remembered that Bowaters does a steady and repetitive volume of business of sixty-two and a half million ($62,500,000.00) dollars annually in the United States. The instant case presents a "labor dispute" in a much more tangible form than do the facts in *Marine Cooks and Stewards v. Panama S. S. Co., supra*, for here the union with members in the United States as well as Canada is pro-

festing the unfair treatment which its members in Canada have received at the hands of Bowater but also protesting the threat which the substandard wages and working conditions presents to its members in the United States. The dispute is more domestic than foreign for virtually the total market of the wood pulp is the United States. Bowater, the second largest paper company in the world, enjoys that status in large part because of its substandard wages and working conditions. While we insist it is not a matter for judicial appraisal to consider "the wisdom or unwisdom, the rightness or the wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means" (*U. S. v. Hutcheson*, 312 U. S. 219) in the case at bar the unfairness of Bowaters was determined by the Newfoundland Mediation Board with regards the Newfoundland woodcutter. In view of the undisputed facts, petitioner's insistence that Bowaters (either the woodcutting, pulpmaking, or the ships which transport the product) and I. W. A. do not have a "direct or indirect interest" in the woodcutting or paper manufacturing industry within the meaning of 29 U. S. C. 1136-1 exalts the separate "corporate identity" and shop worn "independent contractor" arguments while overlooking the undisputed conclusion that they have at least a "direct or indirect interest" in the industry. Clearly, this would be a "labor dispute" even if there had been "no dispute" in Newfoundland, for the I. W. A. could rightly believe that Bowater's substandard wage rates and labor conditions will tend to drive down wage rates and labor conditions in the United States where United States employers must compete in the same market. This is a classic illustration of "Greshams Law of Wages".

We respectfully submit that any uniqueness that may have appeared in this type of case has been dispelled by

the decision of this Court in *Marine Cooks and Stewards v. Panama Steamship Co.*, 362 U. S. 365.

POINT FOUR

The National Labor Relations Board has exclusive jurisdiction of the subject matter of this dispute.

The N. L. R. B. has exercised jurisdiction on all fours with the instant dispute in International Woodworkers Union (dec. Nov. 20, 1959, T. S. Smith & Son, Inc.), 45 LRRM 1081. In that case the I. W. A. picketed a vessel carrying paper from Newfoundland (the A. N. D. Company). The Board held that their finding of a violation of Section 8 (b) (4) (a) of the Labor Management Relations Act of 1947, 29 U. S. C. (b) (4) (a) "is not precluded by the fact that the primary employer and its employees are foreign, as the unfair labor practice occurred in this country". Surely that case establishes beyond peradventure that the instant case is "arguably" within the primary and exclusive jurisdiction of the N. L. R. B. and the approach adopted by this Court in *San Diego Building Trades Council v. Garmon*, 359 U. S. 230, 245 N. 4 should obtain. And see *N. L. R. B. v. Insurance Agents Union* (Feb. 23, 1960), 361 U. S. 477 N. 23.

If there be basis for granting certiorari then it would exist for the purpose of clarifying the extensions of this Court's decision in *Benz v. Compania Naviera Hidalgo*, 353 U. S. 138 where the sole question involved was the power of a Federal Court in a diversity of citizenship case to award money damages where the District Court applied State law which law made the union's conduct unlawful.

That is not our case. The decision of the Court of Appeals below because of *Benz* and perhaps because of in-

adequacy of this writer, looked to the New York law in a non-diversity case.

For the purposes of this argument, since it is demonstrably clear that this Court's decision in *Marine Cooks and Stewards v. Panama S. S. Co.*, is dispositive of the basic issue here, it would be inappropriate to reach a subsidiary issue beyond the requirements of a decision.

POINT FIVE

The convention to "regulate the commerce between the Territories of the United States and His 'Britannic Majesty'" of 1815 has no relevancy to this litigation.

Petitioner rests on the dissenting opinion in the Court below but both the petition and the dissenting opinion argue from other treaties.

This convention urged by petitioner was not self executing. Indeed President Madison in his message to Congress, December 23, 1815 recommended "such legislative provisions" as the Convention might call for. Annals, 14 Cong., 1st Sess. 29. Such a convention does not purport to establish private rights. Indeed so far as research will disclose every time an issue arose it was referred to the Executive Department for composition rather than the judiciary.

In 1821 an English vessel complained of a pilotage charge, the British Minister complained to Secretary of State Adams, who wrote Governor Randolph of Virginia giving his interpretation that pilotage was included in the equalization of duties. Moore V. Int. Law Dig. Sec. 830.

Taney stated that the "subject to the laws" clause was clear, and Article I could not be construed to imply an ob-

ligation to protect the rights of foreign owners of slaves brought to our shore as seamen. 2 Op. Attorney General 475.

Butler wrote that aliens coming within our territory are entitled to the same protection in their personal rights as our own citizens and no more. 3 Op. Attorney General 254.

It will be seen therefore that wherever issues arose as to the meaning of this Convention, the matter was referred to the political arm of the Government for vindication or rejection. The opinions cited further demonstrate that there is no substance to the argument now pressed upon this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari be denied.

Respectfully submitted,

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PETER J. CROTTY,
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Dated: September 21, 1962.